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नई दिल्ली, शनिवार, मई १८, १९८५/वैशाख २८, १९०७

No. 7] NEW DELHI, SATURDAY, MAY 18, 1985/VAISAKHA 28, 1907

इस भाग में भिन्न पृष्ठ संख्या ही आती है जिससे कि यह बलग संकलन के रूप में
रखा जा सके

Separate paging is given to this Part in order that it may be filed as a separate
compilation

भाग II—खण्ड ३—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

संघ राज्य के अन्य प्रशासनों को छोड़कर केंद्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, २७ अप्रैल, १९८५

भा.अ. १३ :—लोक प्रतिनिधित्व अधिनियम, १९५१
(१९५१ का ४३) की धारा १०६ के अनुसरण में, निर्वाचन आयोग १९८५ की निर्वाचन अर्जी संख्या १ में दिया गया बम्बई उच्च न्यायालय, बम्बई का तारीख २ अप्रैल, १९८५ का आदेश प्रकाशित करता है।

[संख्या ८२/दा.ना.ह.—लो.सं./१/८५]

आदेश से

घर्मवीर, सचिव

भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

New Delhi, the 27th April, 1985

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ELECTION PETITION NO. 1 OF 1985Shri Ramjibhai Potiyabhai Mahala adult, residing at
Kauncha, Post Dudhani, Dadra and Nagar Haveli,

Petitioner

Versus

- Sitaram Jiviyabhai Gavli resident of Mandoni, Dadra and Nagar Haveli.
- Natubhai Dhanjibhai Patel, at and post Sukhala, Tasuka Dharampur, District Valsad, State of Gujarat.
- Baraj Soniyabhai Mudrabhai at Galonda, Post Kilkavni, Dadra and Nagar Haveli.

Respondents

Mr. C. J. Sawant for the petitioner,

Mr. R. S. Mohite with Mr. D. R. Dhanuka for respondent no. 1.

CORAM : S. P. BHARUCHA, J.
2nd April, 1985**ORAL JUDGMENT**

The question that arises for determination in this election petition is : was the 1st respondent disqualified for being chosen as a member of Parliament on the date fixed for the scrutiny of his nomination paper. It is not in dispute, since he is the returned candidate, that the acceptance of his nomination materially affected the result of the election.

On 2nd May, 1979 the 1st respondent was appointed a junior clerk in the Administration of the Union Territory of

O.N. 13.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order, pronounced on 2nd April, 1985 by the High Court of Judicature at Bombay in Election Petition No. 1 of 1985.

[No. 82/DNH-HP/1/85.]

By Order

DHARAM VIR, Secy.
Election Commission of India.

Dadra and Nagar Haveli. His appointment letter set out, inter alia, the following conditions :

1. He will be governed by the Central Civil Service Rules.
2. The appointment is purely on temporary basis and is liable to be terminated at ONE month's notice.
6. Before resigning the post he shall have to give one month's notice to the Administration, failing which he should have to remit one month's notice pay before he could be relieved from service."

On 13 November 1984 General Elections to Parliament were notified.

On 21st November 1984 the 1st respondent wrote a letter to the Collector, Dadra and Nagar Haveli (now referred to as "the letter of termination"), which read thus :

"As I intend to contest the forthcoming Parliament Election from Dadra and Nagar Haveli Parliamentary Constituency, I the undersigned hereby give up my post of Investigator which I am holding as temporary Government Servant forthwith. As I am giving up my post forthwith, I hereby tender my pay plus allowances of one month vide Demand Draft No. C. 199981 from State Bank of India, Silvassa Branch dated 21-11-1984 of Rs. 1024.05 (Rupees One thousand and twentyfour and paise five only) in favour of Development and Planning Officer, Dadra and Nagar Haveli, Silvassa, hence I cease to be a temporary Government Servant from today only. This letter of giving up my post as temporary Government Servant is covered by Rule 5(1) (a) of CCS Temporary Service Rules."

On 23rd November 1984 the 1st respondent sent a telegram to the Lt. Governor of Goa, Daman and Diu, who is the Administrator of Dadra & Nagar Haveli. He stated in the telegram that he "gave up my temporary post of investigator with crediting one month's pay plus allowances under Rule 5(1)(a) of Central Civil Services Temporary Service Rules on 21-11-84 being temporary Government Servant for contesting the election of Dadra and Nagar Haveli constituency". In the telegram the 1st respondent expressed anxiety that the Collector had not finalised the matter nor taken the records of his post and that he would be deprived of his right to contest the election if "decision is not taken before 27-11-84".

On 24th November 1984 the 1st respondent wrote to the Development & Planning Officer, Dadra and Nagar Haveli. He recorded that he had requested that the files and papers of his office be taken from him and that he had been informed by the Development and Planning Officer that they would be taken only after getting orders from the Collector. He submitted with the letter all the files and papers in his possession.

On 26th November 1984 the Secretary to the Administrator, Dadra and Nagar Haveli, wrote to the 1st respondent with reference to the letter of termination. He stated that "notice of termination of service take effect on the expiry of the prescribed period of one month. There is no provision under Rule 5(1) of the CCS Temporary Service Rules under which a Government servant can deposit one month pay in lieu of the purchase of period of notice. Hence as per Rule 5(1) of the CCS Temporary Service Rules quoted by you the notice of termination of your service will take effect only after the expiry of one month from the date of submission of notice".

On 27th November 1984 the 1st respondent replied to the Secretary to the Administrator saying, inter-alia, this :

"As per the condition No. 2, the appointment is purely on temporary basis and is liable to be terminated at one month's notice and as per the condition No. 6. Before resigning the post, I have to give one month's notice to the Administration, failing which I have to remit one month's notice pay before I can be relieved from service."

I am not holding any office of profit with the Govt. of India from 21-11-1984. I have tendered notice with immediate effect and also deposited one month's

pay in lieu of notice as per the terms and conditions of my appointment. I have already given my charge. My notice became effective from that very day and does not require any formal acceptance as per rules. Under the above circumstances for being chosen as a Member of Parliament."

In the meantime, on 26th November 1984 the 1st respondent addressed a letter to the Returning Officer, Dadra and Nagar Haveli. The relevant portions of this letter read thus :

"Since I intended to contest the elections, I have given up my post of Investigator from 21-11-1984. Under Rule 5(1)(a) of the C.C.S. Temporary Services Rules 1965, my service can be terminated by me by giving a notice in writing to the appointing authority. Accordingly, I have addressed a letter dt. 21-11-1984 to the Collector, Dadra and Nagar Haveli informing him that I have given up my post of Investigator and that I cease to be a Temporary Govt. servant from the date of the letter. I say that under Rule 5 of the C.C.S. Rules, I am only required to give one month's notice and no further act is required to be done for termination of my services. In particular, the same notice is neither required to be replied to or even considered by the appointing authority. The said notice under Rule 5(1) has been given by me on 21-11-1984.

I say that I have ceased to be a Govt. Servant on 21-11-84, when I have given one month's notice pay. In any case there can be no doubt my services will come to an end by operation of statute after the period of one month, that is say, on 20-12-1984. Thus I will not be holding any office of profit with the Govt. of India on 24-12-1984 which is the declared date of election in Dadra and Nagar Haveli. Under the circumstances, I will have no disqualification for being chosen as a Member of Parliament on 24-12-84 as contemplated by Article 102 of the Constitution of India..... I once again state that without prejudice to my contention that I have ceased to be a Govt. Servant on 21-11-1984 itself, in any case I shall cease to be one on 20-12-1984. This position cannot be in dispute in view of the absolutely clear position of Rule 5 of the C.C.S. Rules 1965."

On 28th November 1984 the date fixed for scrutinizing nomination papers, the petitioner objected to the 1st respondent's nomination and the Returning Officer passed an order after a summary enquiry during which both sides were heard. He stated "I have a doubt as to whether Shri Gavali Sitaram Jivabhai (the 1st respondent) hold an office of profit as on today, under the Administration of Dadra and Nagar Haveli. Hence, I decide to give the benefit of this doubt to the candidate and accept this nomination".

On 30th November 1984 the list of contesting candidates for Dadra & Nagar Haveli Parliamentary Constituency was notified by the Returning Officer. The petitioner and the respondents were named therein.

On 24th December 1984 polling took place.

On 28th December 1984 the results of the election were declared, and the 1st respondent was declared duly elected from the Dadra Nagar Haveli Parliamentary Constituency.

On 18th January, 1985 this petition was filed.

The correspondence was tendered in evidence by consent. Only the 1st respondent has given oral evidence. In his brief examination-in-chief he stated that he had met the Collector, Dadra & Nagar Haveli, on 22nd and 23rd November 1984 and requested him to take charge as he was giving up his post. The Collector did not give him a proper answer. On 24th November 1984 he made a written submission to the Development and Planning Officer tendering all his files and papers to him. The Development and Planning Officer accepted the letter and the files and papers. In cross-examination the 1st respondent admitted that when he handed over the files and papers to the Development & Planning Officer on 24th November 1984, it was an unilateral action on his part. The Development & Planning Officer had not issued to him any receipt for the files and papers. He had only signed upon the office copy of the 1st respondent's application.

The relevant provisions of law must be noticed at the outset. Under Article 102(1), (a) of the Constitution of India a person is disqualified for being chosen as a member of Parliament if he holds any office of profit under the Government of India other than an office declared by Parliament by law not to disqualify its holder. It is not in dispute that the 1st respondent held, prior to 21st November 1984, an office of profit under the Government of India other than an office declared by Parliament by law not to disqualify its holder.

Section 100 of the Representation of the People Act, 1951, states that the High Court shall declare the election of a returned candidate to be void if it is of opinion that the result of the election in so far as it concerns a returned candidate, has been materially affected by the improper acceptance of any nomination. Section 36 of the said Act requires the Returning Officer, on the date fixed for scrutiny of nominations, to examine the nomination papers and to decide all objections which may be made to any nomination and, after such summary inquiry as he thinks necessary, reject any nomination inter-alia, on the ground, that on the date fixed for the scrutiny of nominations the candidate is disqualified for being chosen to fill the seat under Article 102.

Rule 5(1)(a) of the Central Civil Services Temporary Service Rules, which are admittedly applicable to the 1st respondent, reads thus:

"5(1) (a) the services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month;

Provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month."

It was submitted by Mr. C.J. Sawant, learned counsel for the petitioner, that the 1st respondent was disqualified for being chosen as a member of Parliament for the period of one month from the date of service of the letter of termination, i.e. until 21st December 1984, having regard to the provisions of the said Rule 5(1).

Mr. Mohite, learned counsel for the 1st respondent, submitted, first, that the 1st respondent's appointment letter, supplemented the conditions of his service prescribed under the said Rules and furnished the 1st respondent with two alternative modes of terminating his employment as a Government servant; while clause 2 of the appointment letter dealt with the mode of termination provided under the said Rule 5(1), clause 6 provided the independent mode of resignation. Mr. Mohite submitted, next, that the letter of termination was a letter of resignation under clause 6 and was independent of the mode furnished by the said Rule 5(1). Mr. Mohite then submitted that the 1st respondent's resignation became effective on 21st November 1984 itself since it required no acceptance. In the alternative, Mr. Mohite submitted that, because of the proviso thereto, the 1st respondent was entitled under the provisions of the said Rule 5(1) to terminate his service forthwith by paying to Government the equivalent of one month's salary and allowances.

I proceed upon the assumption that the 1st respondent's appointment letter supplemented the conditions of his service prescribed by the said Rules and that clause 6 of the appointment letter furnished him with resignation as a mode of terminating his service.

The question that immediately arises is whether his letter of termination was a letter of resignation or a notice of termination of service under the said Rule 5(1).

What is in this context material in the letter of termination is this sentence : "This letter of giving up my post as temporary Government Servant is covered by Rule 5(1) (a) of C.C.S. Temporary Service Rule". This sentence establishes that the 1st respondent was not tendering his resignation

independent of the provisions of the said Rule 5(1) (a) but was utilising its provisions to terminate his service with Government.

The 1st respondent's letter dated 26th November 1984 written to the Returning Officer leaves no doubt about this. He states therein that since he intended to contest the election, he had given up his post from 21st November 1984 and that "under Rule 5(1) (a) of the C.C.S. Temporary Service Rules" his service could be terminated by him by giving a notice in writing to the appointing authority. "Accordingly", he states, "I have addressed a letter dated 21-11-1984 to the Collector". He states that "under rule 5 of the C.C.S. Rules I am only required to give one month's notice and no further act is required to be done for termination of my services..... the said notice under rule 5(1) (a) has been given by me on 21-11-84". Further in the same letter the 1st respondent reiterates his stand that he had ceased to be a Government servant on 21st November 1984 itself and that, in any case, he would cease to be one on 20th December 1984. "This position", he states, "cannot be in dispute in view of the absolutely clear position of Rule 5 of the C.C.S. Temporary Service Rules 1965".

Further affirmation of this position is found in the telegram addressed by the 1st respondent to Lt. Governor wherein he states that he "gave up his temporary post of investigator....under Rule 5(1)(a)".

Also significant is the reply given by the 1st respondent to the letter dated 26th November 1984 addressed to him by the Secretary to the Administrator. He was informed therein that there was no provision under the said Rule 5(1) by which a Government servant could deposit one month's pay in lieu of the period of notice so that, under the provisions of the said Rule 5(1) quoted by himself, the notice of termination of his service would take effect only after the expiry of one month from the date of its submission. In his reply it was not stated by the 1st respondent that what he had done was to resign his service and that the said Rule 5(1) had no application. The reply demonstrates that the 1st respondent did not draw a distinction between the modes of termination of service furnished by clauses 2 and 6 of the appointment letter.

Mr. Sawant was right in pointing out that even in the written-statement of the 1st respondent it is not averred in specific terms that the letter of termination was a letter of resignation or that it was independent of the provisions of the said Rule 5(1). What is guardedly stated is this :

"Thus, out of abundant caution under legal advise Respondent No. 1 had drafted his letter dated 21-11-1984 so that it covered all methods for giving up his service viz., forthwith resignation and termination of service."

In the circumstances, I cannot accept the submission on behalf of the 1st respondent that the letter of termination was a letter of resignation under clause 6 of the appointment letter. There is no doubt in my mind that the 1st respondent was, by the letter of termination, adopting the mode furnished by the said Rule 5(1) for terminating his service with Government.

I proceed for the moment upon the basis that I am wrong in this and that the letter of termination is a letter of resignation. Clause 6 of the appointment letter, which is said by the 1st respondent's counsel to apply, requires the 1st respondent before resigning his post to give one month's notice; if he does not give one month's notice he is obliged to remit one month's notice pay "before he could be relieved from service". Where, therefore, as in this case, the resignation is tendered without one month's notice the 1st respondent has to be "relieved from service". It is, therefore, not the unilateral act of the 1st respondent that brings about the termination of his service.

It was contended by Mr. Mohite that the 1st respondent was relieved from service when he sent in his files and papers on 24th November 1984. That he sent in his files and papers does not mean that he was relieved from service. It was, as he admitted in evidence, his own unilateral act. And it is crystal clear from the letter dated 26th November 1984 addressed to the 1st respondent by the Secretary to the Administrator that he was not relieved from service and that his service would stand terminated only after the expiry of one month, i.e. on 21st December 1984.

Ordinarily also, the resignation of a Government servant becomes effective only upon its acceptance. In *Raj Narain v. Indira Nehru Gandhi*, A.I.R. 1972 S.C. 1302 the Supreme Court affirmed that when a public servant had invited by his letter of resignation the determination of his employment, his service normally stood terminated from the date on which the letter of resignation was accepted by the appropriate authority. In *Union of India v. Gopal Chandra Misra* A.I.R. 1978 S.C. 694, it was said that in the case of a Government servant who could not, under the conditions of his service or office, by his own unilateral act of tendering resignation give up his service or office, normally, the tender of the resignation became effective and his service or office tenure stood terminated when it was accepted.

I cannot, in the light of the terms of clause 6 of the appointment letter and these authorities, hold, as I am invited by counsel for the 1st respondent to do, that there was an absolute obligation cast upon Government to relieve the 1st respondent from service immediately upon the remission by him of one month's pay. The patent object of the notice period is to enable Government to appoint a substitute for the resigning Government servant so that the administration does not suffer. If the Government finds a substitute earlier than the notice period, it can then relieve its retiring servant. But if it does not, the retiring Government servant is obliged to serve for the duration of the notice period.

Mr. Mohite cited the judgment of the Supreme Court in *Raj Kumar v. Union of India*, A.I.R. 1969 S.C. 180. It was there held that the termination of employment by an order passed by Government does not become effective until the order has been intimated to the servant; but where the Government servant has invited by his letter of resignation the determination of his employment, his services, normally, stood terminated from the date on which his letter of resignation was accepted by the appropriate authority and, in the absence of any law or rule governing the conditions of his service to the contrary, it was not open to the servant to withdraw his resignation after it had been accepted by the appropriate authority. To the extent that the judgment says that the resignation of a Government servant becomes effective only when it is accepted, it is relevant and it assists the petitioner's, not the 1st respondent's case.

Mr. Mohite cited the judgment of a Division Bench of the Mysore High Court in *M. Thiruvengadam v. The Indian Institute of Science*, A.I.R. 1954 Mys. 158. In this case the petitioner's contention that his letter of resignation giving notice of six months did not amount to an unconditional resignation but required acceptance, was not accepted. From the terms of letter it seemed clear to the court that no acceptance was contemplated or required and that it was in the nature of a notice by which the petitioner said that he had resigned his job and would cease to work from a date six months later. Nothing more was, therefore, necessary to be done either by him or by the employers in pursuance of the notice which had put an end to the contract of service in a manner stipulated between the parties. This judgment would have been opposite had the 1st respondent served a notice resigning his service one month after the receipt thereof. It has no application where the period of notice prescribed by the appointment letter is not given, in which event the appointment letter requires the servant to be relieved from service.

I conclude that, assuming that the letter of termination was a letter of resignation, the resignation became effective only one month after the date of its service, i.e., on 21st December 1984.

This brings me to consider the said Rule 5(1). Thereunder the services of a temporary Government servant are liable to be terminated at any time by notice in writing given either by the servant to the appointing authority or by the appointing authority to the servant, and the period of such notice is set at one month. The proviso thereto entitles the appointing authority to terminate the service of the servant forthwith

and entitles the servant in that event to claim a sum equivalent to his pay and allowances for one month or for the period by which the appointing authority's notice falls short of one month. The 1st respondent's argument that the proviso gives the servant co-ordinate power to terminate his services forthwith upon payment to Government of the sum of one month's pay and allowances is having regard to the precise language of clause (1) and its proviso, unacceptable.

Mr. Mohite relied in this context upon a judgment of the Supreme Court in *V. P. Gindroniya v. State of Madhya Pradesh*, A.I.R. 1970 S.C. 1494. The rule under consideration is set out in paragraph 12 of the judgment and is somewhat similar to the said Rule 5(1). Mr. Mohite sought to rely upon this judgment as holding that the proviso applies to a notice of termination given by a Government servant. In para 13 of the judgment the Supreme Court said. "There is hardly any room for dispute that the notice contemplated by the main cl. (a) of rule 12 can be given either by the Government or its temporary servant. The rule in question specifically says so. It is not necessary for us in the present case to decide whether the two provisos to that rule or cl. (b) thereof apply to a notice given by a Government servant. The appellant has assumed that those provisions also apply to a notice given under that rule. We shall for the purpose of this case proceed on the basis of that assumption and see whether the appellant has satisfied that part of the rule also". The Supreme Court was for the purposes of that case merely making an assumption. It came to no finding. The judgment, therefore, does not assist Mr. Mohite.

Summarising, I hold that the 1st respondent's letter of termination dated 21st November 1984 was a notice of termination of his service given under the provisions of the said Rule 5(1), that the 1st respondent's service terminated upon the expiry of one month of the date of service of the letter of termination, i.e., on 21st December 1984; that the 1st respondent was, consequently, holding an office of profit under the Government of India and was, under Article 102, disqualified for being chosen as a member of Parliament on the date of scrutiny of his nomination paper, i.e., on 28th November 1984; that the result of the election was materially affected as a result of the improper acceptance of his nomination; and that, therefore, his election is void.

I answer the issues thus:

Issue No. 1 : Not pressed by Mr. Mohite.

Issue No. 2 : Not pressed by Mr. Sawant.

Issue No. 3 : In the affirmative.

Issue No. 4 : In the affirmative.

Issue No. 5 : In the affirmative.

Consequently, it is declared that the election of the 1st respondent to Parliament from the Dadra and Nagar Haveli Parliamentary Constituency is void.

The 1st respondent shall pay to the petitioner the costs of the petition, quantified at Rs. 750. The petitioner shall be entitled to withdraw the said amount of Rs. 750 from out of the amount of Rs. 2,000 deposited by the 1st respondent in court and the 1st respondent shall be entitled to withdraw the balance amount of Rs. 1,250. The petitioner shall also be entitled to withdraw the amount of Rs. 2,000 deposited by him in court.

Mr. Mohite applies for stay of the order.

The 1st respondent is present in person. Mr. Mohite, on his behalf and upon his instructions, gives an undertaking to court that he shall not, for a period of thirty days from today, participate in the proceedings of or vote in the Lok Sabha and that he shall attend the Lok Sabha only to record his presence.

Upon that undertaking, the order declaring the 1st respondent's election void is stayed for a period of thirty days from today.